

STATE OF TENNESSEE

Office of the Attorney General



REGULATORY
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September 21, 2001

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: Joint Petition of TEC Companies and the
Consumer Advocate Division for Approval
of Earnings Review Settlement
Docket No. 99-00995

Dear David:

Enclosed are the original and thirteen copies of the Attorney General's Objection to AT&T's Motion to Reconsider and Comments Concerning the Need for a Hearing in the above-mentioned case. A copy has been delivered via facsimile and US mail to all interested parties.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Phillips", written over a horizontal line.

Timothy C. Phillips
Assistant Attorney General

CC: R. Dale Grimes, Esq.
T. G. Pappas, Esq.
J. W. Robinson, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

**IN RE: JOINT PETITION OF TEC)
COMPANIES AND THE CONSUMER)
ADVOCATE DIVISION FOR APPROVAL)
OF EARNINGS REVIEW SETTLEMENT)**

Docket No. 99-00995

**ATTORNEY GENERAL'S OBJECTION TO AT&T'S MOTION TO RECONSIDER
AND COMMENTS CONCERNING THE NEED FOR A HEARING**

INTRODUCTION

The Attorney General of the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter for the State of Tennessee ("Attorney General"), objects to the Motion to Reconsider filed by AT&T on September 6, 2001. Further, there is no need for any additional hearings in this matter short of submitting the Joint Petition to the Directors for approval.

DISCUSSION

There is simply no reason to hold up the agreement between the TEC Companies and the Attorney General any longer. AT&T's latest attempt at delay in this matter should be rejected. The matter should proceed toward consideration for approval of the Joint Petition by the Tennessee Regulatory ("Authority") without further delay.

This industry has changed significantly since the 1980s. However, little has changed with respect to the purpose of access charges since the March 17, 1988, Order in Tennessee Public Service Commission Docket No. U-87-7492 (the "Megacom Order"). While the directives from

the Federal Communication Commission ("FCC")¹ propel the industry and regulators toward change, the regulatory precedent and present policy are the same. Access charges were designed to compensate local telephone service providers for their overall costs and to keep local rates down.² Regrettably this may change. However, for now the Joint Petition reflects precisely how an over earnings situation should be handled. The Joint Petition reflects the present state of regulatory law now and as it was when the Joint Petition was first filed.

The only real change is that AT&T has successfully lobbied the legislature for deregulation of pricing. Now AT&T may make the argument that it does not have to pass on to consumers its savings related to access charge reductions as envisioned in the Megacom Order.

AT&T has presented nothing in this docket that suggests the TRA should treat this matter any differently than a simple over earnings situation in which it is appropriate to return to the rate payers through credits or refunds the amount of that over earnings. AT&T's desired relief should not be considered in this docket. Clearly, AT&T seeks access charge reform, as reflected in AT&T's filings in this matter.³ AT&T wishes to address reductions in the access charges and competition issues more appropriately considered in other dockets open before the Authority and

¹ Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service*; Docket No. 00-256, *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*; Docket No. 99-68, *In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic*; and Docket No. 01-92, *In the Matter of Developing a Unified Intercarrier Compensation Regime*.

² Megacom Order.

³ Statement of Issues by AT&T Communications of the South Central States, Inc., dated 6/5/00, pp. 1-3; AT&T Communications of the South Central States, Inc. First Set of Discovery Requests to the Consumer Advocate Division, dated 3/23/00, pp. 1-6;

the FCC. AT&T's approach is more specifically addressed in previous filings by this office.⁴

AT&T's problem is universal in nature in that every access charge from an incumbent local exchange carrier ("ILEC") such as TEC is not based on cost. Under the Megacom Order the charges are not to be based on cost. Access charges are not at issue. AT&T should not be allowed to hold the TEC rate payers hostage in order to gain leverage over an issue not present in this docket.

To the extent it is able, TEC has responded to AT&T's discovery request. Mr. Work's testimony, in particular, presents exhaustive evidence with respect to reasonableness of the forecast. On the issue of rate design, AT&T just misses the point. Access charges are not set based on cost of the specific rate element. The entire infrastructure and the very existence of the local telephone service provider must be taken into consideration. Rising local telephone service rates are likely. It is important that the Authority not divert to AT&T these late vestiges of assistance designed to help the consumer. Until the FCC and/or the Authority reaches the point of recognizing a different approach with generic and universal impact the issues in the present docket are rather simple.

Impact on competition is not the issue in this matter. The access charges are the same for each carrier. AT&T's stab at Vartec is a red herring. AT&T functions in the environment it has publicly sought for years... straight competition. It does not compete with TEC. It competes with Vartec on equal footing, it just chooses not to lower its rates to what Vartec is charging. The arguments by AT&T concerning competitive pressures suggest little that changing the

⁴Consumer Advocate Division's Comments on AT&T's Statements of Issues, dated 6/14/00, pp. 1-5.

credits to refunds will not cure.

The settlement agreement between TEC and the Attorney General's Office does the most to benefit the TEC ratepayers and for that matter, rate payers period. The reductions of access charges to AT&T, Sprint, BellSouth, etc. goes straight to their bottom line, net income. With their impending deregulation by the legislature, AT&T is not compelled to flow through access reductions to any of the ratepayers of Tennessee. AT&T now has the opportunity to raise their long distance rates to cover the loss in margin from access charges due to the ILECs.

Moreover, AT&T is simply not a consumer with respect to the over earnings situation presented by the present matter. AT&T has offered neither theory nor authority supporting its idea of how it fits into the category of "consumer."

This Authority seeks to perform its duties consistent with the legislature's intent as interpreted by this Authority and/or the judiciary. In doing so, the Authority relies on the law, the facts and its own policy, which certainly include its own established policies. Consequently, AT&T is bound by the Authority's May 25, 1999 Order in the Access Charge Reform Docket, No. 97-00889. As noted by Director Malone at the May 15, 2001 Authority Conference, where the Authority has clearly spoken on an issue that issue should be consider resolved. AT&T's position in the present docket is unequivocally addressed in the Authority's decision of May 25, 1999 in the Access Charge Reform Docket No. 97-00889:

If access rates are reduced, is it appropriate to do so in this proceeding or during the one time rate rebalancing phase in the Universal Docket as required by Tenn. Code Ann. § 65-5-207(c)?

If access rates are reduced, it is appropriate to do so in the one time rate balancing phase of the Universal Service Docket (Phase III). Tenn. Code Ann. § 65-5-207 requires that the Authority consider access charges as part of universal service.

Tenn. Code Ann. § 65-5-207(c)(8)(iii) states that, at a minimum, the Authority must consider intrastate access rates and the appropriateness of such rates as a significant source of universal service support. It does not, however, dictate whether this should be done in developing the universal support mechanism or during rate re-balancing. In Phase II of the Universal Service Docket, the Authority identified the amount of the universal service subsidy, while the purpose of rate rebalancing in Phase III is to identify rate adjustments needed as a result of the support mechanism created in Phases I and II. To facilitate the orderly handling of access charges, the Authority concludes that access charge adjustments should be considered in Phase III of the Universal Service Docket, along with all other potential sources of the universal service subsidy.

AT&T offers no reason to justify injection into the present docket of the broader issues more appropriately handled in the Access Charge Reform or the Universal Service dockets. The Attorney General does not object to AT&T's presentation of its claim for access charge reform. However, the present docket is not the appropriate place for presentation of issues that do not impact review of the TEC Companies' earnings.

CONCLUSION

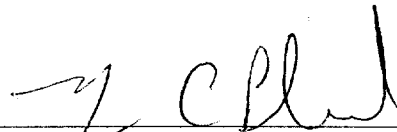
The Attorney General and AT&T agree that the present case is "separate and distinct" from the Access Charge Reform Docket. The present case is about the TEC companies and the money they owe their customers. Reducing AT&T's access rates has nothing to do with this focus. The present docket and the Access Charge Reform have different purposes, involve different parties (in that the Access Charge Reform Docket is more inclusive), and raise different issues. This is an over-earnings matter. AT&T's interest in reducing access charges belongs in the Access Charge Reform Docket or the Universal Service dockets. AT&T will have all appropriate opportunities to persuade the Authority to reduce access charges in the Access Charge Reform Docket or the Universal Service dockets. Removal of AT&T from the present

docket will not preclude it from pursuing access charge reform in the appropriate docket.⁵

AT&T's pleading for additional delay and thus the opportunity to wring additional profits out of Tennessee consumers should be denied. Its motion should be denied and the Joint Petition approved with all due speed.

A hearing is not necessary in this matter. Final briefing would probably be helpful, but the briefing schedule should be set promptly.

RESPECTFULLY SUBMITTED,

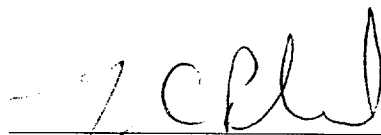
A handwritten signature in black ink, appearing to read 'C Phillips', is written over a horizontal line.

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⁵AT&T's argument to the contrary in its Reply to the Attorney General's motion is inaccurate.

CERTIFICATE OF SERVICE

The undersigned certifies that on September 21, 2001, an exact copy of the foregoing was delivered via facsimile transmittal and mailed, via U.S. Mail, postage prepaid, to **Jack W. Robinson, Esq.**, Gullett, Sanford, Robinson & Martin, PLLC, 230 Fourth Avenue North, 3rd Floor, P.O. Box 198888, Nashville, TN 37219-8888; and **T.G. Pappas, Esq. and R. Dale Grimes, Esq.**, Bass, Berry & Sims, 2700 First American Center, 313 Deaderick Street, Nashville, TN 37238-2700.



TIMOTHY C. PHILLIPS
Assistant Attorney General

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